

**COUNTY OF SAN LUIS OBISPO
DEPARTMENT OF PLANNING AND BUILDING
STAFF REPORT**

2-1

PLANNING COMMISSION

MEETING DATE January 13, 2004	CONTACT/PHONE Martha Neder, AICP 805-781-4576	APPLICANT King Ventures	FILE NO. N/A
SUBJECT Appeal by King Ventures of a Planning Director determination (pursuant to Land Use Ordinance Section 22.70.050) that the as-built guardhouse and gate structure are not allowed within the 500 foot setback required pursuant to Heritage Ranch Village area plan standard 10e. The project is located on the east side of Lake Nacimiento Drive, approximately 1 mile south of Nacimiento Lake Dam, within the Heritage Ranch Village area of the Nacimiento Planning Area.			
RECOMMENDED ACTION Deny the appeal based on the finding listed in Exhibit A			
ENVIRONMENTAL DETERMINATION Not required			
LAND USE CATEGORY Residential Suburban	COMBINING DESIGNATION Geologic Study Area, Sensitive Resource Area	ASSESSOR PARCEL NUMBER 012,371,005	SUPERVISOR DISTRICT(S) 1 2 3 4 5 All
PLANNING AREA STANDARDS: Communitywide #10e: Provide a minimum open space setback of 500 feet from the centerline of Lake Nacimiento Drive for all development parcels, fences, and primary and accessory structures.			
EXISTING USES: As-built guardhouse and gate structure			
SURROUNDING LAND USE CATEGORIES AND USES: <i>North:</i> Residential Suburban <i>South:</i> Residential Suburban <i>East:</i> Residential Suburban <i>West:</i> Residential Suburban			
OTHER AGENCY / ADVISORY GROUP INVOLVEMENT: Heritage Ranch Homeowner's Association, CDF			
TOPOGRAPHY: Nearly level near Lake Nacimiento Drive; sloping to the east		VEGETATION: Grasses	
PROPOSED SERVICES: Water supply: N/A Sewage Disposal: N/A Fire Protection: CDF		ACCEPTANCE DATE: September 20, 2004	
ADDITIONAL INFORMATION MAY BE OBTAINED BY CONTACTING THE DEPARTMENT OF PLANNING & BUILDING AT: COUNTY GOVERNMENT CENTER ♦ SAN LUIS OBISPO ♦ CALIFORNIA 93408 ♦ (805) 781-5600 ♦ FAX: (805) 781-1242			

BACKGROUND:

In April 2004, Enforcement Case COD2003-00370 was opened as a result of numerous complaints regarding the construction of a guardhouse and gate structure, located approximately 150 feet from the centerline of Lake Nacimiento Drive, without permits. Staff determined that the as-built guardhouse and gate structure could not be permitted in its current location due to Heritage Ranch Village planning area standard 10e which requires a minimum open space setback of 500 feet from the centerline of Lake Nacimiento Drive for all development parcels, fences, and primary and accessory structures.

In a letter dated April 28, 2004 (attached), the applicant requested a Planning Director's determination that area plan standard 10e did not apply to the as-built guardhouse and gate structure because 1) there are other properties along Lake Nacimiento Drive with similar gates and structures, 2) topography does not allow for an entrance gate to be located outside the 500-foot setback, 3) the gate is allowable in the Residential Suburban land use category, and 4) the gate does not adversely affect public health or safety.

The Planning Director made the determination that the area plan standard does apply to the as-built guardhouse and gate structure because they are considered structures and not allowable within the 500 foot setback. Further the fencing does not meet the fencing standards detailed in Land Use Ordinance Section 22.10.080 for fence height and materials allowable within the front setback (see attached letters dated August 12, 2004 and June 4, 2004).

PROJECT DESCRIPTION:

The guardhouse is 64 square feet in size and located approximately 137 feet from the centerline of Lake Nacimiento Drive. The gate structure consists of five pilasters ranging from nine feet to 12 feet in height and connected by a solid wall ranging from approximately five to seven feet in height (see Exhibit B).

DISCUSSION:

In order to permit the as-built guardhouse and gate structure, a minimum of three things would need to occur. The Planning Commission would need to find that planning area standard 10e does not apply to the guardhouse and gate structure. The wall which connects the pilasters would need to be either less than 3 feet in height or 6 feet 6 inches in height if constructed with open wire, chain link, or other materials that permit the passage of a minimum of 90 percent of light consistent with Land Use Ordinance Section 22.10.080. Finally, the guardhouse would need to meet the requirements of the California Building Code and be handicap accessible.

Planning Area Standard 10e. Planning area standard 10e requires a minimum open space setback of 500 feet from the centerline of Lake Nacimiento Drive for all development parcels, fences, and primary and accessory structures. The applicant has provided pictures of gates and other structures within 500 feet of Lake Nacimiento Drive.

The intent of the 500 foot setback is to protect the scenic quality of Lake Nacimiento Drive, which is a designated federal scenic highway. Historically, ranch-style fences and gates in this area have been constructed for the keeping of animals. As the area developed, residents began constructing fencing and gates that were not intended for the keeping of animals. However, these fences and gates were still typically constructed in an open, ranch-style. County staff and the public have been of the general opinion that these open ranch-style fences and gates did not warrant strict interpretation of planning area standard 10e since they retained the rural, ranching character of the area.

Recently, gate structures along Lake Nacimiento Drive have begun to "push the envelope" related to this standard with their size and massiveness. However, most gate structures still

have not exceeded seven feet in height and none include a guardhouse. Further, none have generated complaints.

Although this standard has been interpreted with some latitude, the as-built guardhouse and gate structure for Tract 1910 has clearly crossed the line due to the massiveness of the gate structure (close to double the size of other gate structures) and the inclusion of the guardhouse. The guardhouse and gate structure are not consistent with other gates along Lake Nacimiento Drive as they are significantly larger in scale. The increased massiveness and scale of the guardhouse and gate structure are inconsistent with the intent of the scenic setback.

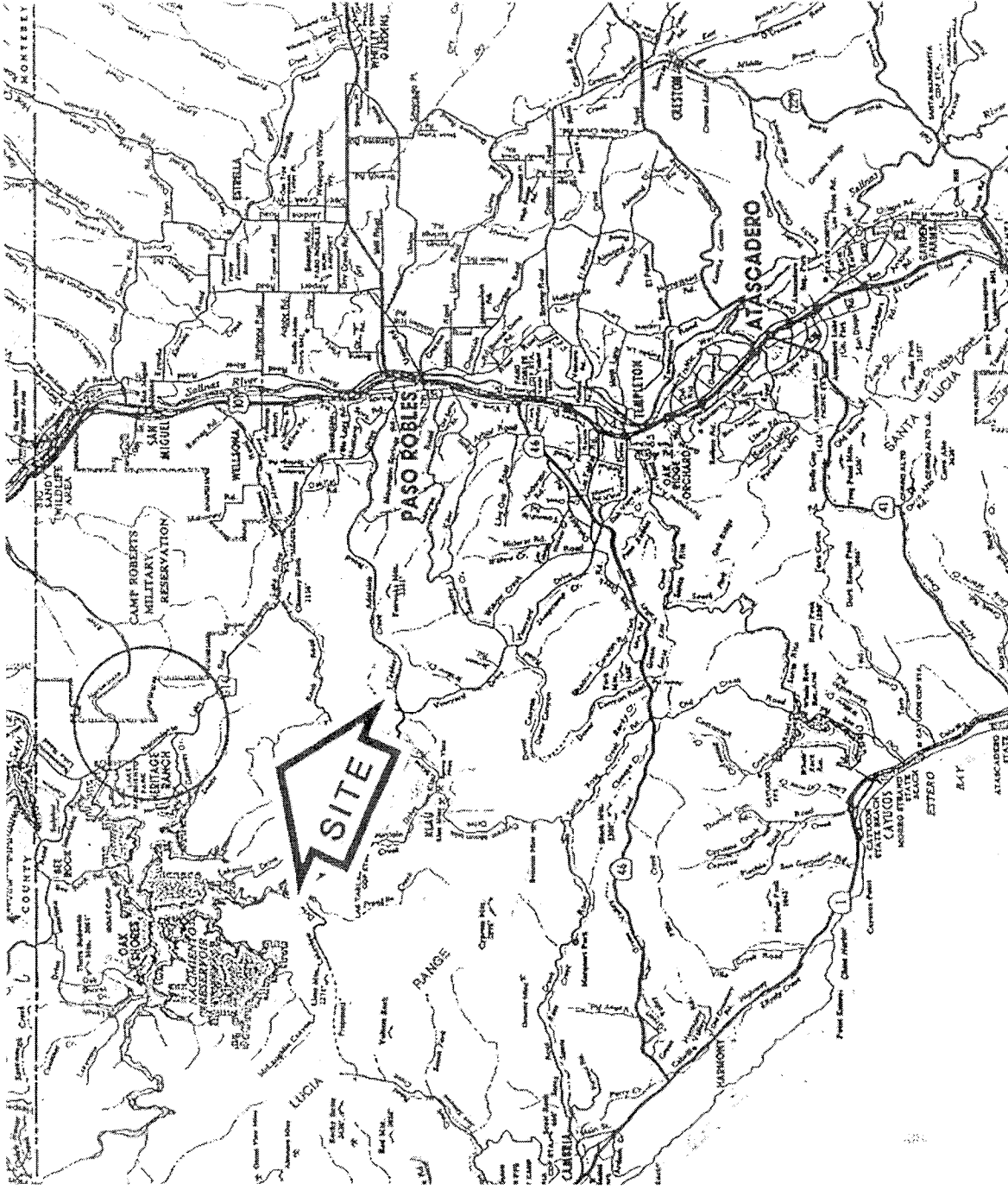
Fencing. The outside pilasters of the gate structure are connected with a solid wall ranging from five to seven feet in height. Land Use Ordinance Section 22.10.080 limits fences made of solid structures or plants to a maximum of 3 feet in height when located within the front setback. Fences made of open wire, chain link, or other materials that permit the passage of a minimum of 90 percent of light consistent are limited to a maximum height of 6 feet 6 inches. Further, conditions of approval for Tract 1910 and its accompanying development plan require fencing to be uniform through the tract consisting of solid wood (cedar or redwood), or shall be split rail fencing, or similar design as deemed appropriate. The batten sided, solid wall between five and seven feet in height is inconsistent with the Land Use Ordinance and tract and development plan conditions.

California Building Code. The guardhouse is considered a commercial structure because it would be occupied by an employee and is not accessory to a residential use. The guardhouse would need to be constructed in compliance with the California Building Code which at minimum requires handicap accessibility and a handicap accessible restroom. Clearly, the guardhouse, especially if constructed compliant with the California Building Code, is a structure and not allowable within the 500 foot setback.

Staff report prepared by Martha Neder and reviewed by Warren Hoag

EXHIBIT A – FINDINGS

- A. Heritage Ranch Village area plan standard 10e (Land Use Ordinance Section 22.102.040 A.10(e)) does apply to the as-built guardhouse and gate structures because their scale and massiveness are inconsistent with the intent of the scenic setback, the guardhouse is considered a structure and not allowable within the required 500 foot setback, and the fencing does not meet the fencing standards detailed in Land Use Ordinance Section 22.10.080 for fence height and materials allowable within the front setback.
- B. This request for an interpretation of the Land Use Ordinance is not a “project” under the California Environmental Quality Act and therefore does not require an environmental determination.



PROJECT

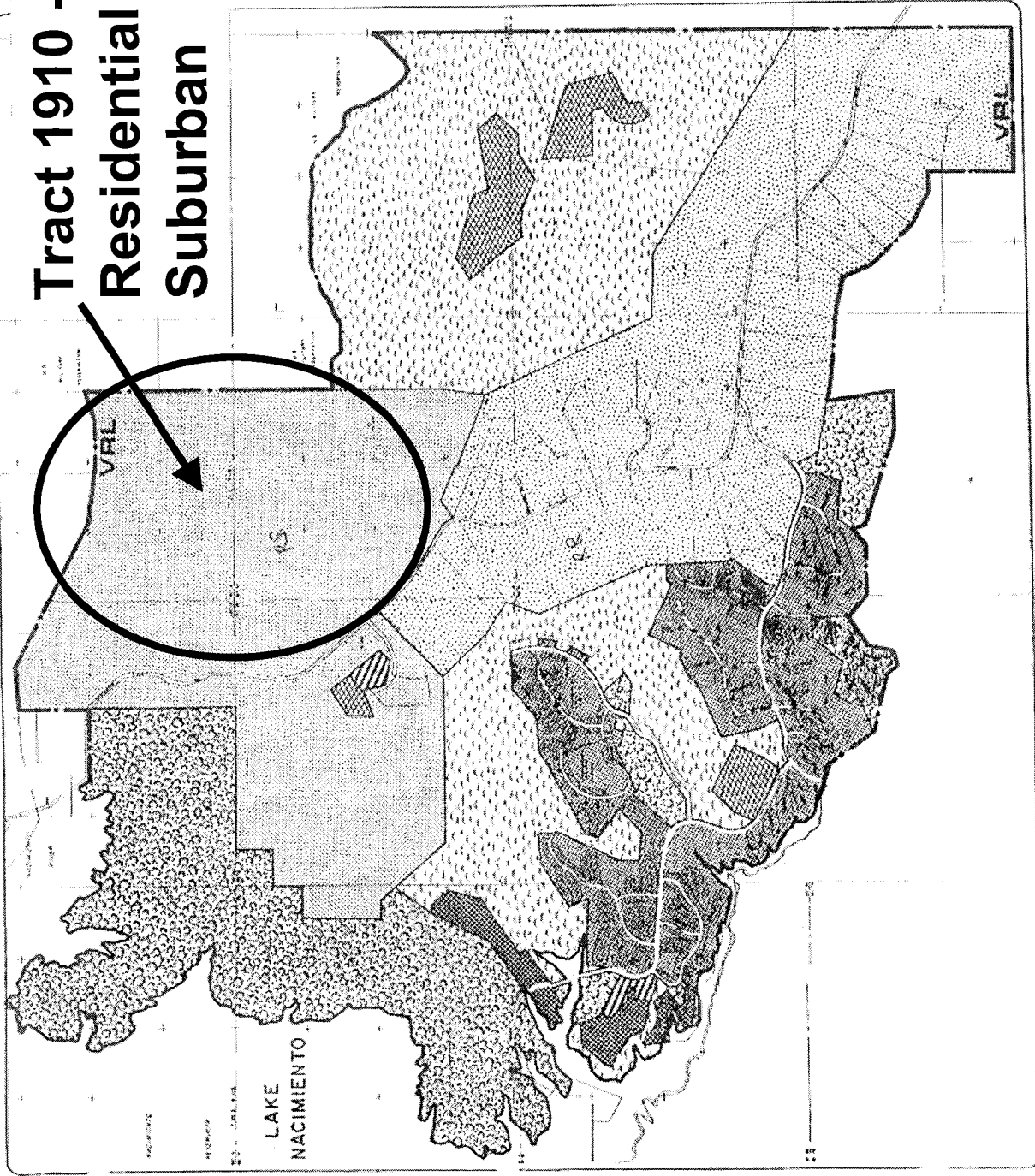
Ordinance Interpretation
King Ventures 3-02038

EXHIBIT

Vicinity Map



Tract 1910 -
Residential
Suburban



EXHIBIT

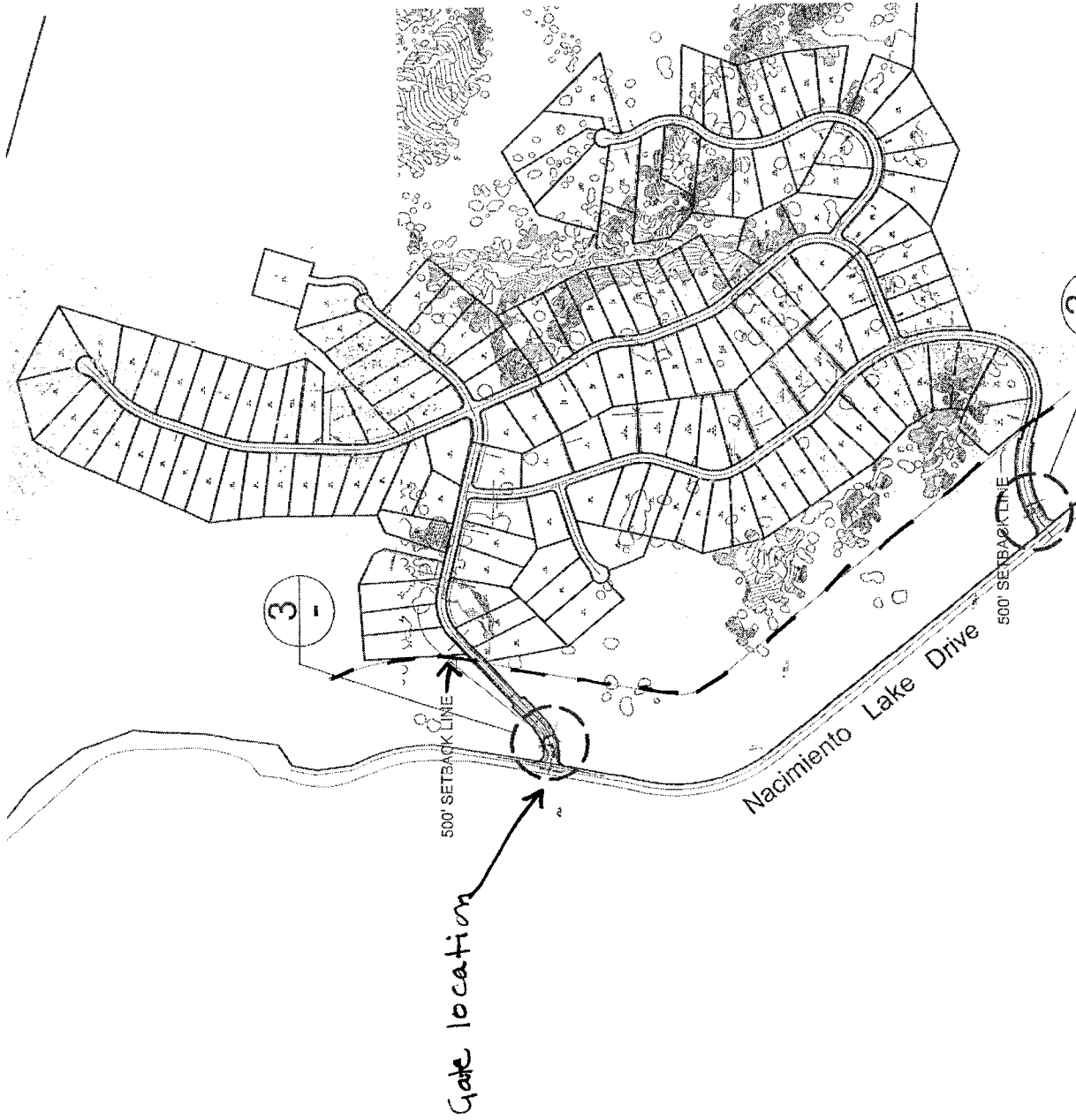
Land Use Category Map



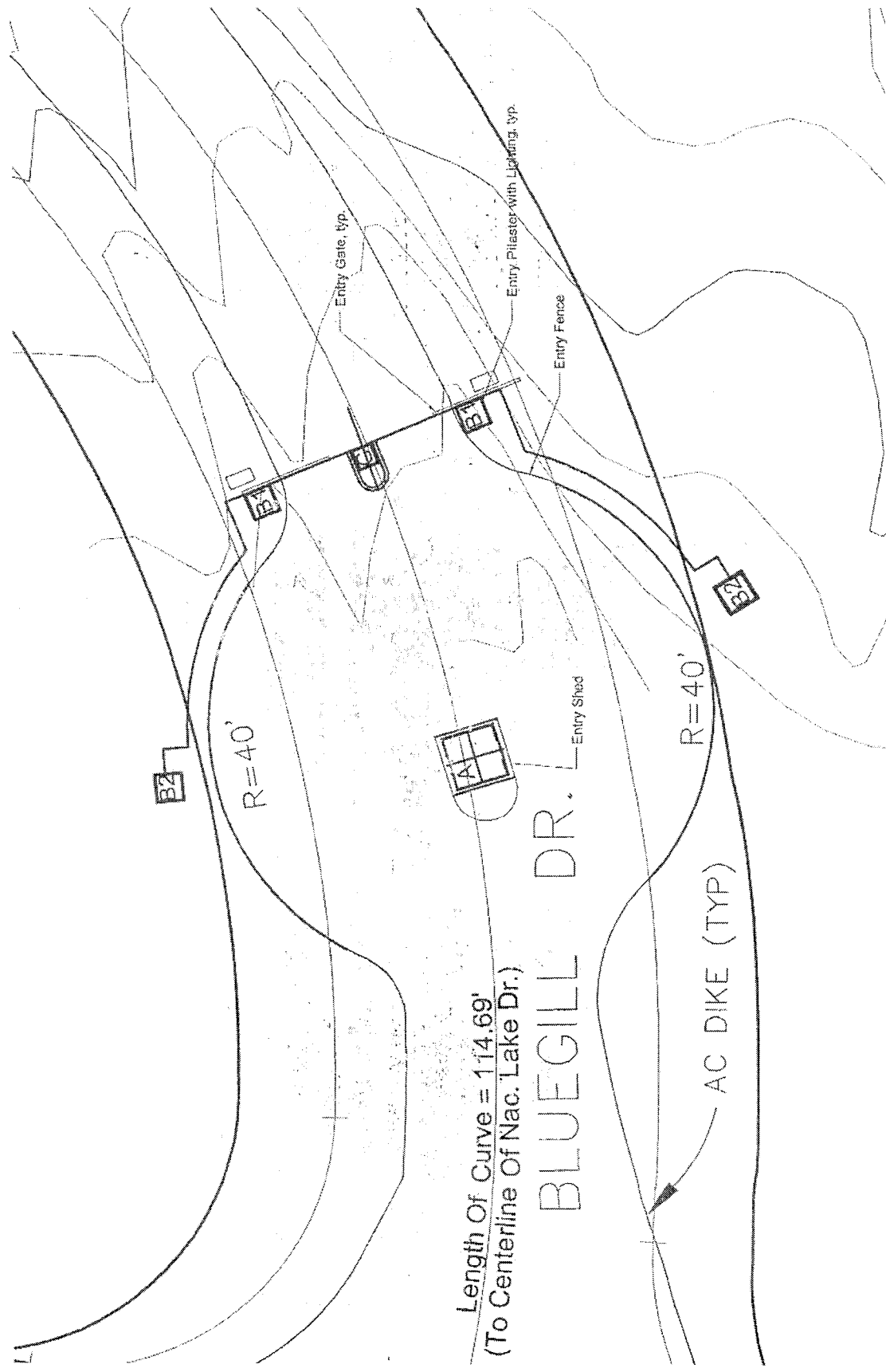
PROJECT

Ordinance Interpretation
King Ventures 3-02038

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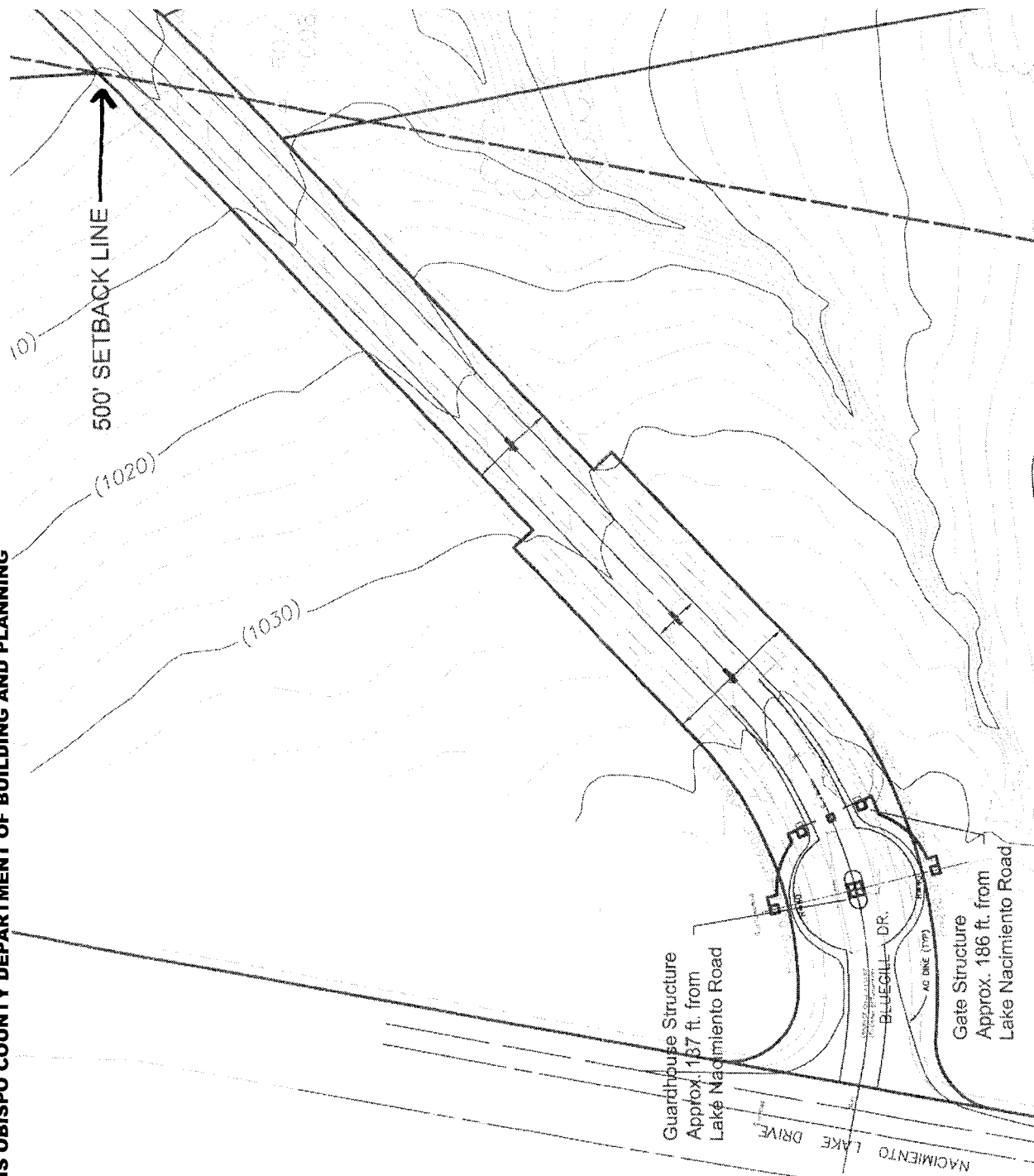
EXHIBIT

Site Plan

PROJECT

Ordinance Interpretation
King Ventures 3-02038





PROJECT

SEC. 1
Ordinance Interpretation
King Ventures 3-02038



EXHIBIT

500 foot Setback Line

2-10

PLEASE PRINT NAME
2004 APR 30 AM 9:31



April 28, 2004

Mr. Harley Voss
San Luis Obispo County Planning
Code Enforcement Division
County Government Center
San Luis Obispo, CA 93408

Re: Entrance Gates for Tract 1910, Heritage Ranch (Permit #3-02038)

Dear Mr. Voss:

Per our conversation today, enclosed please find the Tract 1910 as-built gate plan, as well as setback exhibits for Lake Nacimiento Drive. We respectfully request that you present these materials at the next Planning Department meeting in order to determine whether the area standard 10e on page 9-48 of the Land Use Ordinance applies to this gate. That standard requires a minimum open space setback of 500 feet from the centerline of Lake Nacimiento Drive. We ask that the Planning Department make an ordinance interpretation based in part on the following considerations:

- a. The gate and its location are consistent with gates, fences and other structures which currently exist on other properties along Lake Nacimiento Drive. (Please see attached photos.)
- b. The steeply sloping topography of the site in the vicinity of the entrance does not allow for an entrance gate to be located outside of the 500-foot setback.
- c. The gate is an allowable use in the Residential Suburban land use category; and
- d. The gate does not adversely affect public health or safety, nor is it detrimental to public welfare or injurious to nearby property or improvements. On the contrary, locating the entrance gate for the tract outside of the 500-foot

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setback would create a hazardous condition due to steep slopes and the resulting limited sight distance.

Please do not hesitate to contact our office if you have any questions or require further information. I may be reached directly at (805) 544-4444, extension 242. Thank you for your attention in this matter.

Sincerely,

King Ventures



Rachel K. Kovesdi

Project Planner

Cc. Jay Johnson, San Luis Obispo County Planning

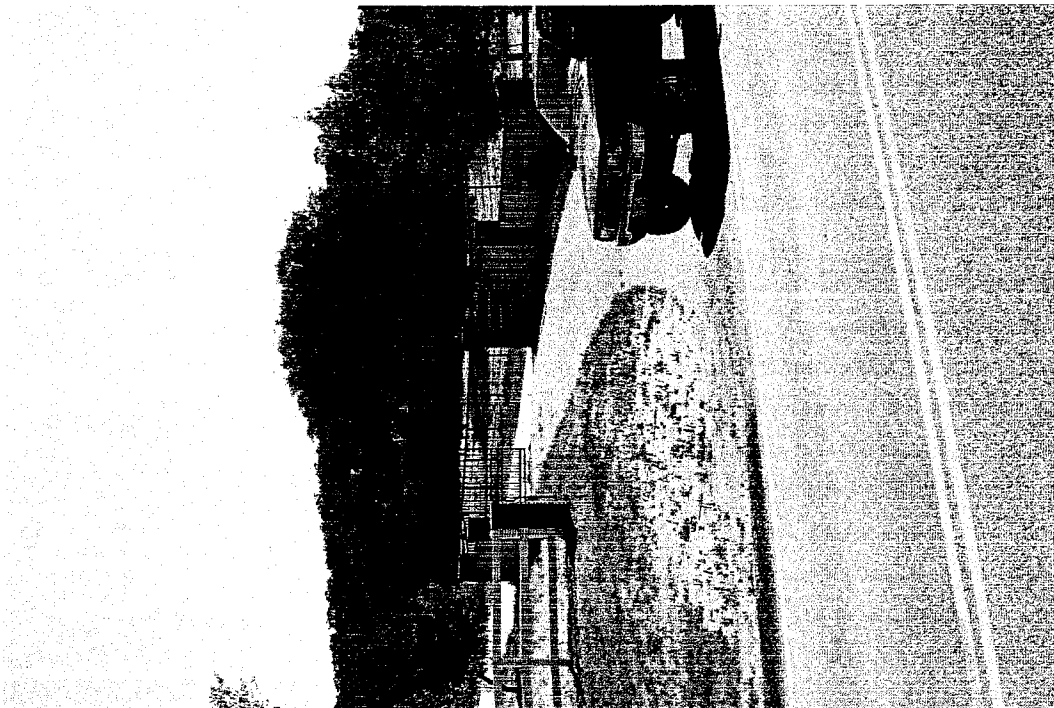
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**Tract 1910 Entrance Gate
Permit #3-02038**

**Photos of Gates and Other Structures within 500-foot Setback
from Nacimiento Lake Road (G14).**

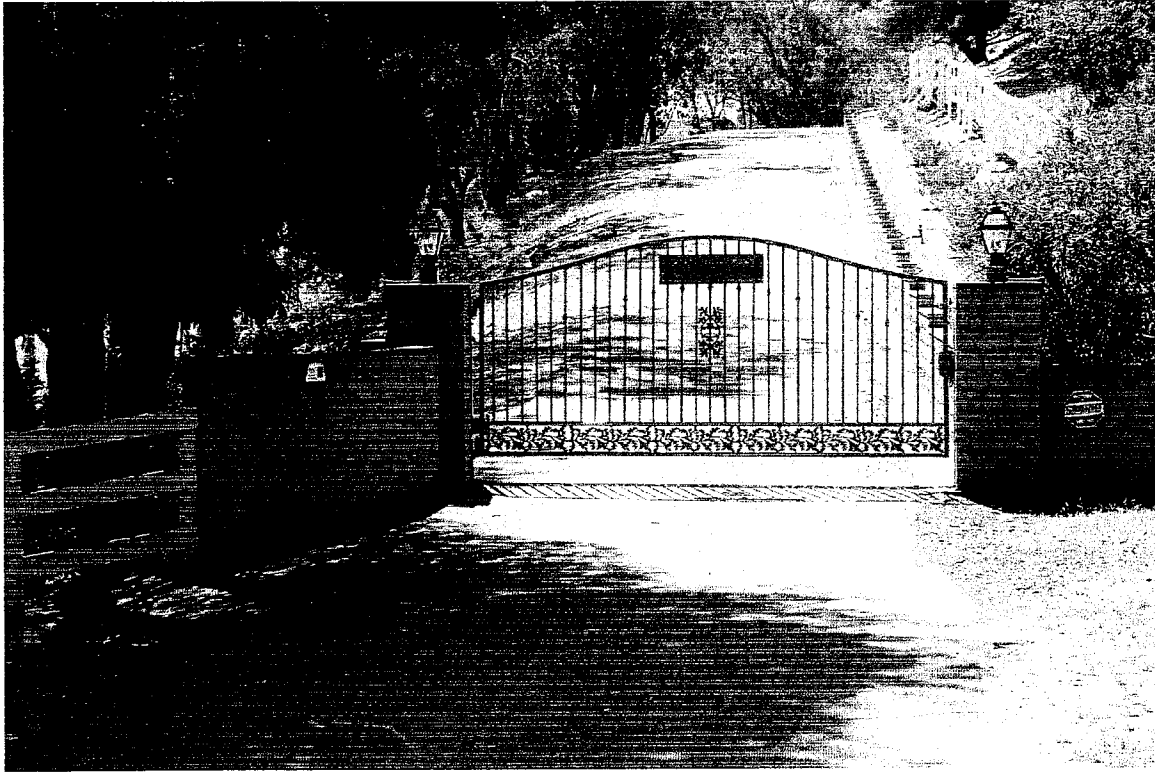
Photos taken on April 28, 2004. All structures shown are within a three-mile radius of the project site.

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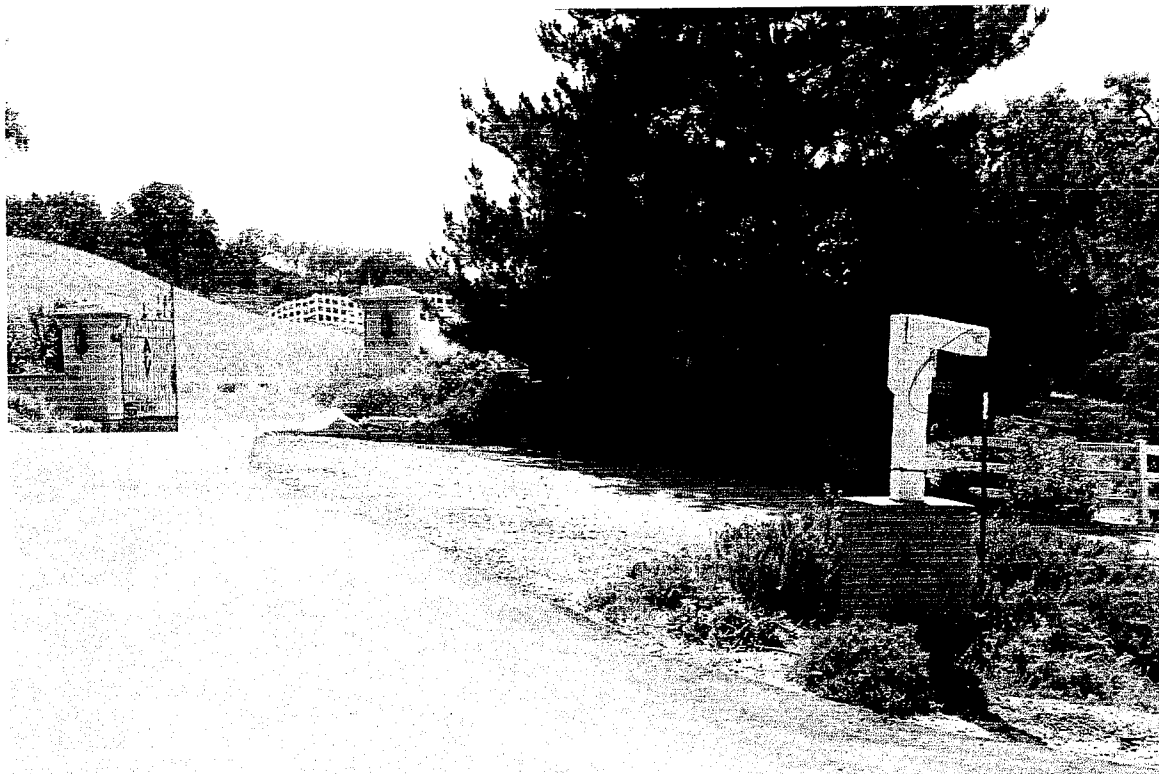
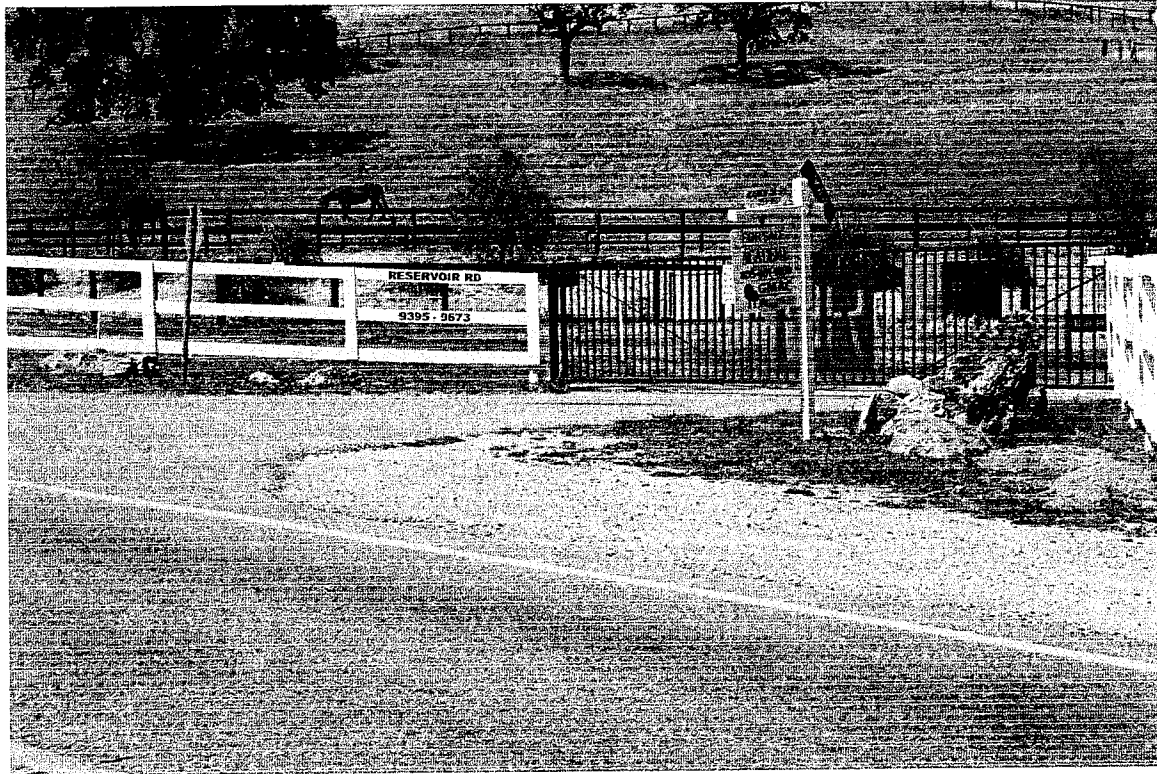


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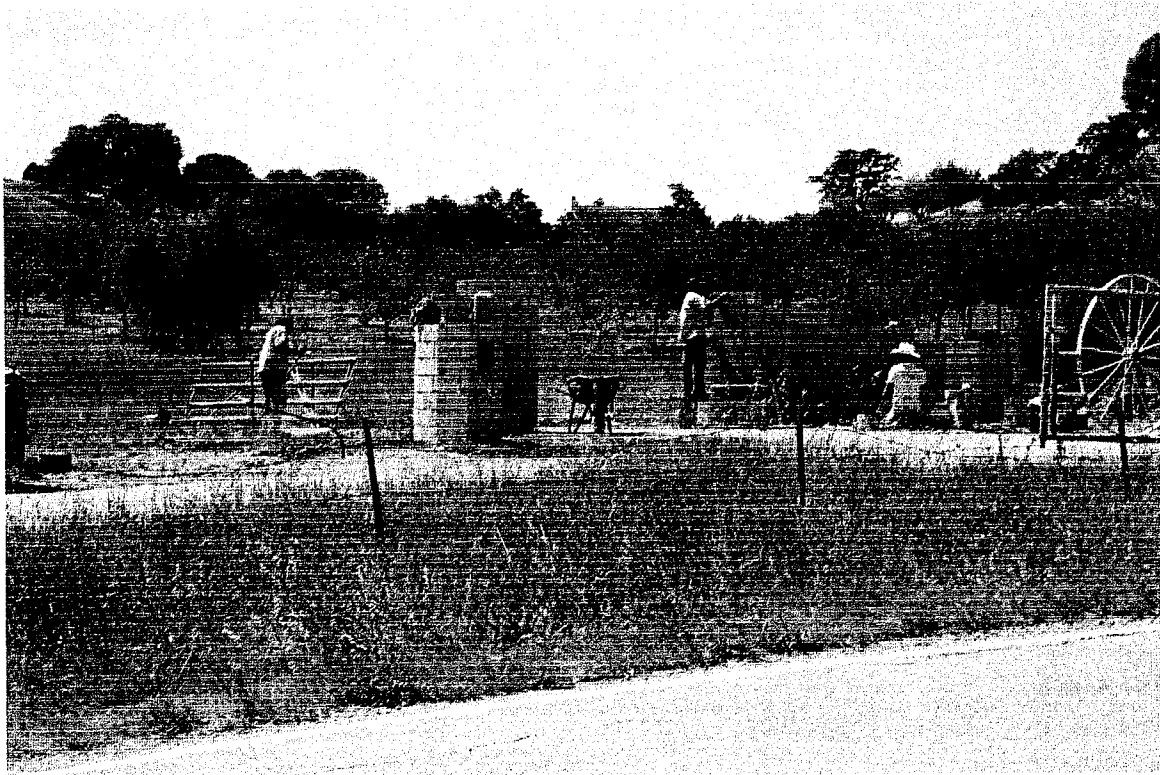
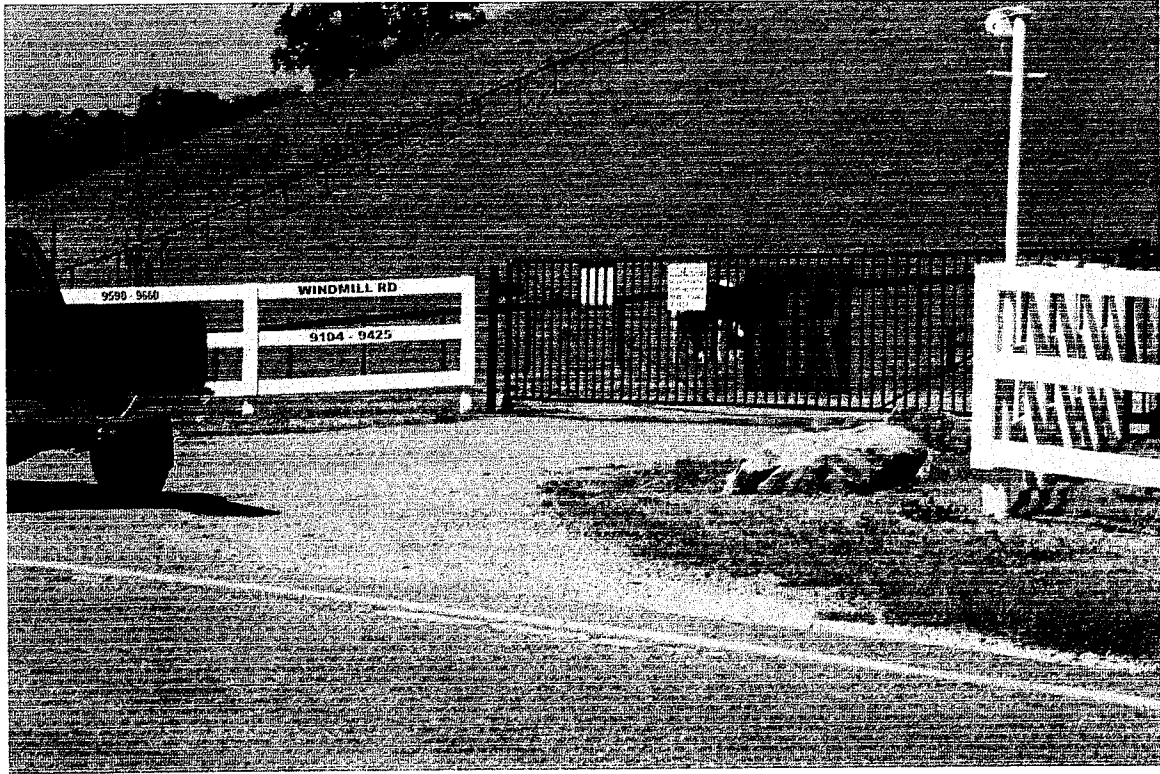
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SAN LUIS OBISPO COUNTY
DEPARTMENT OF PLANNING AND BUILDING

VICTOR HOLANDA, AICP
DIRECTOR

June 4, 2004

King Ventures
Ms. Rachel Kovesdi, Project Planner
285 Bridge Street
San Luis Obispo, CA 93401

Subject: Entrance Gates for Tract 1910

Dear Ms. Kovesdi:

This letter is in response to your request for a Planning Department interpretation of the applicability of area plan standard 10e on page 9-48 of the Land Use Ordinance to the as-built guardhouse and gate structures constructed within 500 feet of the centerline of Lake Nacimiento Drive. Area plan standard 10e reads "**Setback**. Provide a minimum open space setback of 500 feet from the centerline of Lake Nacimiento Drive for all development parcels, fences, and primary and accessory structures." Our records indicate that no construction or land use approvals were applied for prior to the construction of the guardhouse and gate structures.

The Director of Planning and Building has determined that area plan standard 10e on page 9-48 of the Land Use Ordinance does apply to the as-built guardhouse and gate structures because these are considered structures and not allowable within the required 500 foot setback. Further, the fencing does not meet the fencing standards detailed in Land Use Ordinance Section 22.10.080 for fence height and materials allowable within the front setback.

Therefore, please remove the as-built guardhouse and gate structures within 30 days. If the as-built guardhouse and gate structures are not removed within 30 days this matter will be forwarded to our Code Enforcement Division for further action.

Pursuant to County Land Use Ordinance Section 22.70.050, you have the right to appeal this decision to the Planning Commission up to 14 calendar days after the date of this notice, in writing, to the Department of Planning and Building. The appeal fee is \$474.00 and must accompany your appeal form.

If you have questions or need additional information, please do not hesitate to contact me at (805) 781-4576.

Sincerely,



Martha Neder, Planner

cc. Harley Voss, Code Enforcement
Chuck Stevenson, Supervising Planner

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PW



August 9, 2004

Commissioners Wayne Cooper, Doreen Liberto-Blanck, Sandra Nielsen, Bob Roos,
Chairman Eugene Mehlschau
San Luis Obispo County Planning Commission
County Government Center
San Luis Obispo, CA 93408

Re: Entrance Gates for Tract 1910, Heritage Ranch (Permit #3-02038)

Dear Commissioners Cooper, Liberto-Blanck, Nielsen, Roos and Chairman Mehlschau:

Enclosed please find the Tract 1910 as-built gate plan, as well as setback exhibits for Lake Nacimiento Drive. We respectfully request that the Planning Commission review these materials and determine that the area standard 10e on page 9-48 of the Land Use Ordinance does not apply to this gate. That standard requires that development "provide a minimum open space setback of 500 feet from the centerline of Lake Nacimiento Drive for all development parcels, fences, and primary and accessory structures".

We respectfully request that the Planning Commission make an ordinance interpretation that:

1. The gate and fence are allowable uses in the Residential Suburban land use category;
2. The gate and its location are consistent with gates, fences and other structures which currently exist on other properties along Nacimiento Lake Drive, including several constructed this year. (Please see attached photos.) Insofar as many fences, including a solid masonry wall constructed within the last six months (9675 Nacimiento Lake Drive) have been constructed within the 500 foot open space setback, it appears that this standard was not intended and has not been previously applied to restrict entry gates and fences; and
3. The gate does not adversely affect public health or safety, nor is it detrimental to public welfare or injurious to nearby property or improvements. On the contrary,

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PLANNING COMMISSION

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Planning Commission Interpretation Request

August 9, 2004

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due to the presence of residential parcels, increasing slopes along Bluegill Drive and limited sight distance, locating the entrance gate for the tract outside of the 500-foot setback may create a hazardous condition.

We look forward to resolving this matter. Please do not hesitate to contact our office if you have any questions or require further information. I may be reached directly at (805) 544-4444, extension 242. Thank you for your attention.

Sincerely,

King Ventures



Rachel K. Kovesdi
Project Planner

Cc. Jay Johnson, San Luis Obispo County Planning

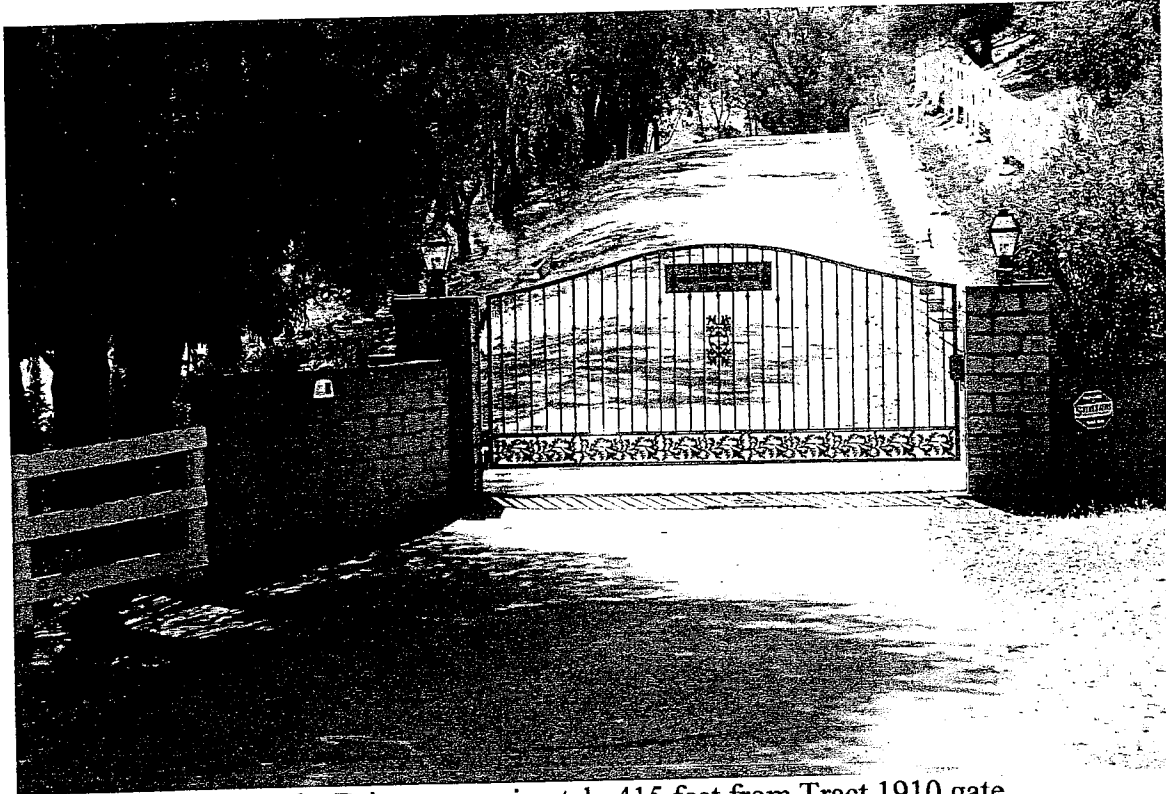
2-22

**Tract 1910 Entrance Gate
Permit #3-02038**

**Photos of Gates and Other Structures within 500-foot Setback
from Nacimiento Lake Drive (G14).**

Photos taken on April 28, 2004. All structures shown are within a three-mile radius of the project site.

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10025 Nacimiento Lake Drive, approximately 415 feet from Tract 1910 gate.
Approximately 110 feet from centerline of Nacimiento Lake Drive.

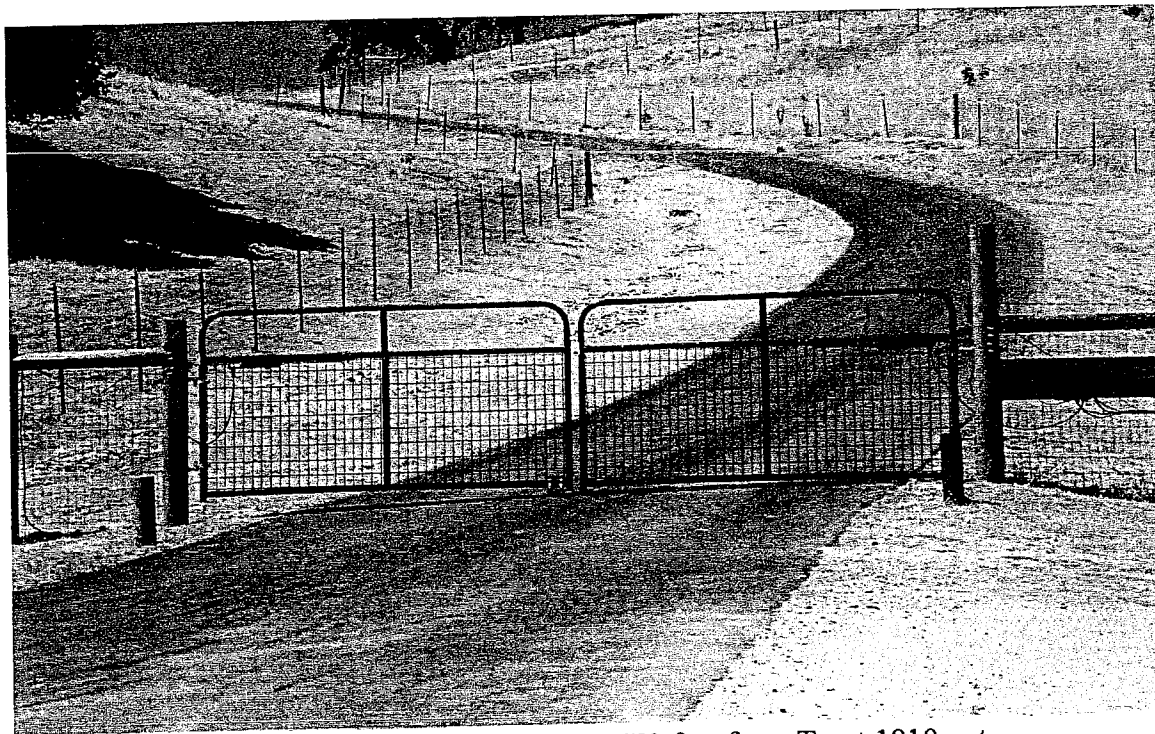


9925 Nacimiento Lake Drive, approximately 710 feet from Tract 1910 gate.
Approximately 110 feet from centerline of Nacimiento Lake Drive.

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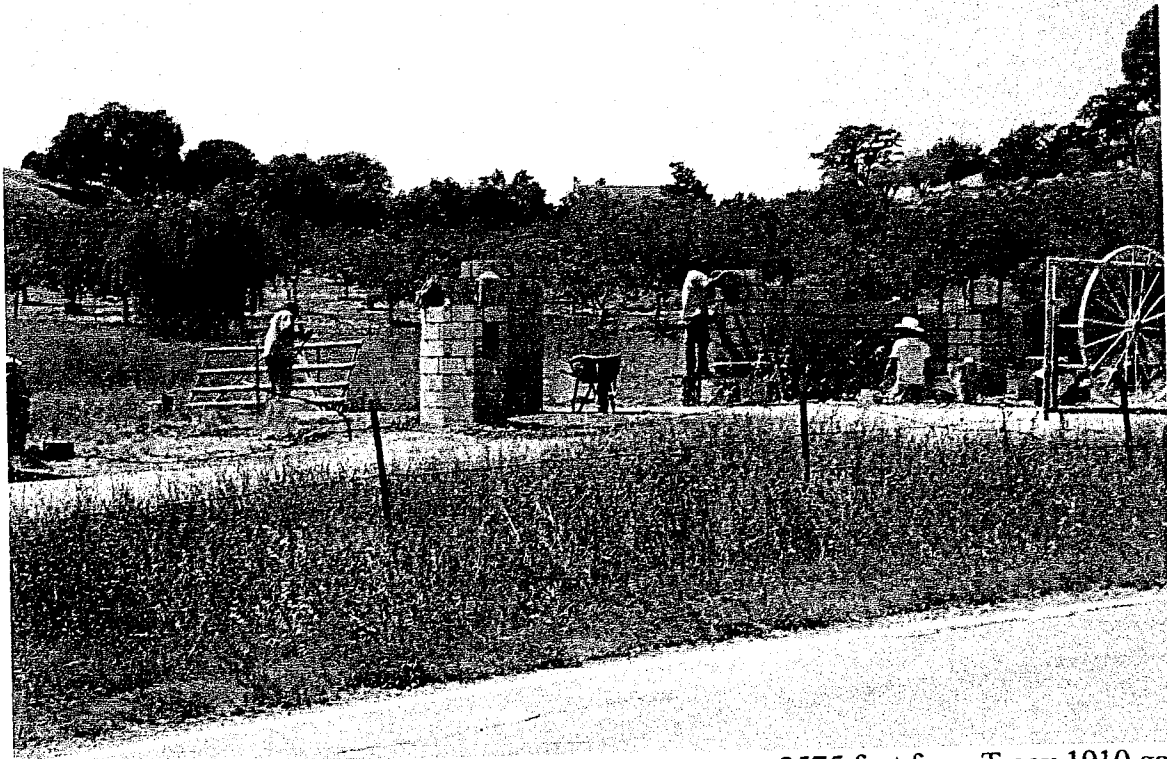


9855 Nacimiento Lake Drive, approximately 1275 feet from Tract 1910 gate.
Approximately 135 feet from centerline of Nacimiento Lake Drive.



9755 Nacimiento Lake Drive, approximately 1670 feet from Tract 1910 gate.
Approximately 95 feet from centerline of Nacimiento Lake Drive.

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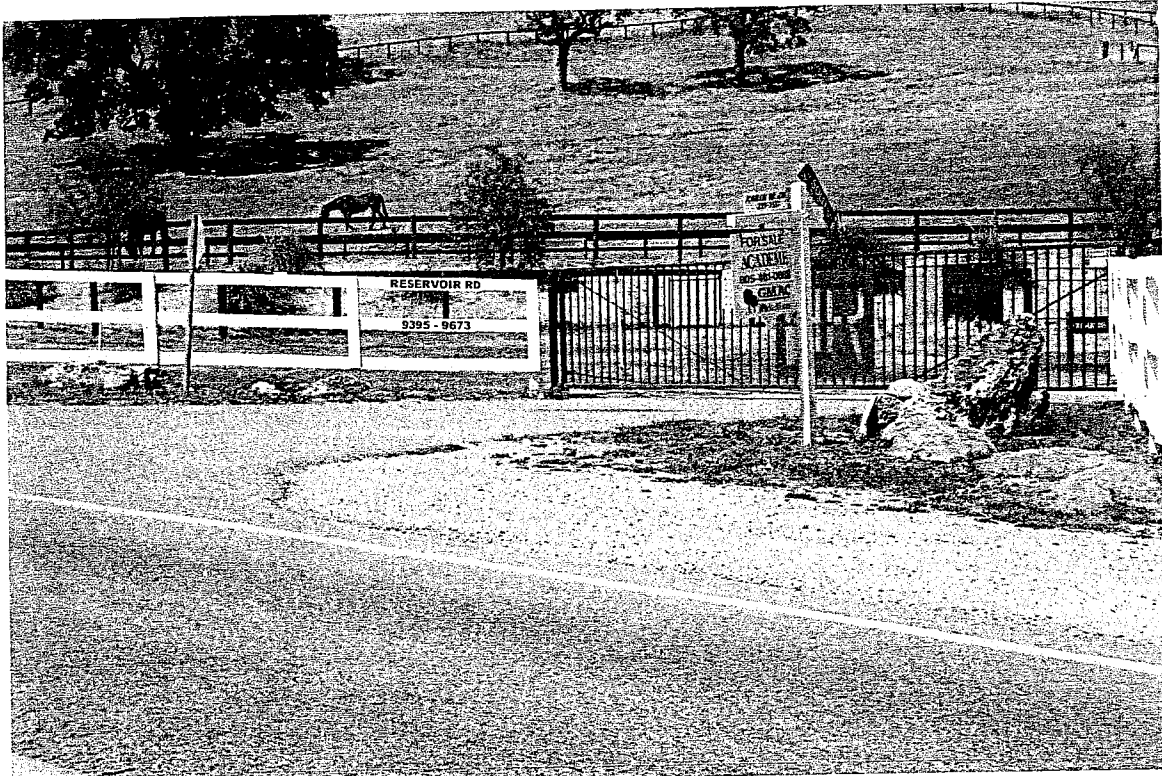


9675 Nacimiento Lake Drive (under construction), approx. 2575 feet from Tracy 1910 gate. Approximately 95 feet from centerline of Nacimiento Lake Drive.

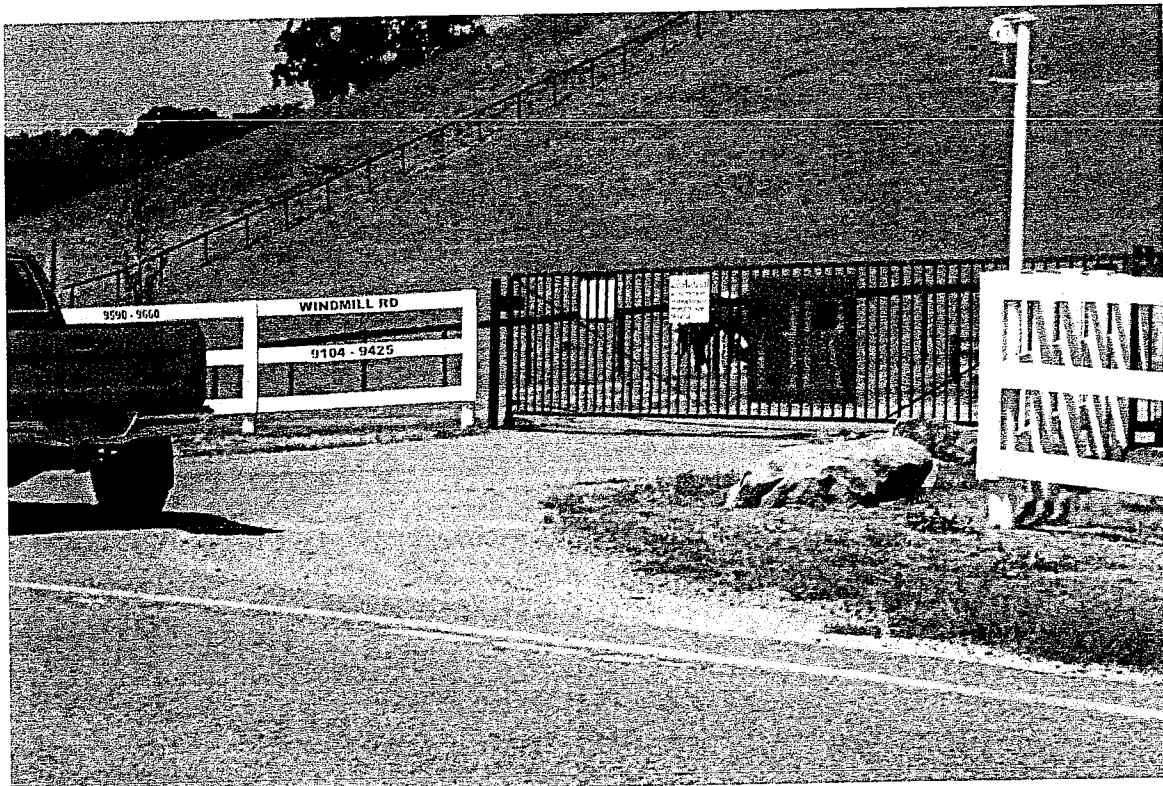


9675 Nacimiento Lake Drive (post-construction), approx. 2575 feet from Tracy 1910 gate. Approximately 95 feet from centerline of Nacimiento Lake Drive.

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9395 – 9673 Nacimiento Lake Drive, approximately 2575 feet from Tract 1910 gate.
Approximately 65 feet from centerline of Nacimiento Lake Drive.



9104-9425 Nacimiento Lake Drive, approximately 2595 feet from Tract 1910 gate.
Approximately 70 feet from centerline of Nacimiento Lake Drive.

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Approximately 1.4 miles from Tract 1910 gate.
Approximately 70 feet from centerline of Nacimiento Lake Drive.

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8225 Nacimiento Lake Drive, approximately
2.5 miles from Tract 1910 gate.
Approximately 90 feet from centerline of
Nacimiento Lake Drive.



8795 Nacimiento Lake Drive, approximately
2 miles from Tract 1910 gate.
Approximately 90 feet from centerline of
Nacimiento Lake Drive.

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SAN LUIS OBISPO COUNTY
DEPARTMENT OF PLANNING AND BUILDING

VICTOR HOLANDA, AICP
DIRECTOR

August 12, 2004

King Ventures
Ms. Rachel Kovesdi, Project Planner
285 Bridge Street
San Luis Obispo, CA 93401

Subject: Entrance Gates for Tract 1910

Dear Ms. Kovesdi:

Thank you for the request to the Planning Commissioner's for an ordinance interpretation. However, it is not clear how you have made the determination that the Planning Commission can act on this request. Land Use Ordinance Section 22.02.030 - Interpretation Procedure charges the Planning Commission to make an interpretation. However, this section sets the procedure for interpretation "if questions arise **from persons or bodies charged with administering this Title.**"

On June 4, 2004, the Director of Planning and Building issued a determination that area plan standard 10e on page 9-48 of the Land Use Ordinance does apply to the as-built guardhouse and gate structures because these are considered structures and not allowable within the required 500 foot setback. Further, the fencing does not meet the fencing standards detailed in Land Use Ordinance Section 22.10.080 for fence height and materials allowable within the front setback.

As a result, the Director of Planning and Building asked that the as-built guardhouse and gate structures be removed within 30 days and informed you that if the as-built guardhouse and gate structures are not removed within 30 days this matter would be forwarded to our Code Enforcement Division for further action.

Further, you were notified that pursuant to County Land Use Ordinance Section 22.70.050, you have the right to appeal this decision to the Planning Commission up to 14 calendar days after the date of the notice, in writing, to the Department of Planning and Building. The appeal fee is \$474.00 and must accompany your appeal form.

No appeal was filed, rather letters to the Planning Commission for an interpretation were submitted on August 9, 2004.

This letter is notice of the Director of Planning and Building's determination that area plan standard 10e on page 9-48 of the Land Use Ordinance does apply to the as-built guardhouse and gate structures for the reasons described above. Please remove the as-built guardhouse and gate structures within 14 days. If the as-built guardhouse and gate structures are not removed within 14 days this matter would be forwarded to our Code Enforcement Division for further action.

Pursuant to County Land Use Ordinance Section 22.70.050, you have the right to appeal this decision to the Planning Commission up to 14 calendar days after the date of the notice, in writing,

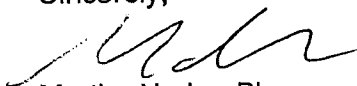
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to the Department of Planning and Building. The appeal fee is \$474.00 and must accompany your appeal form.

The proper procedure to resolve a determination by the Director on the meaning or applicability of standards believed to be in error, is to appeal that determination to the Planning Commission. If you have questions regarding the process, please contact me as soon as possible so that the appeal period is not missed again.

If you have questions or need additional information, please do not hesitate to contact me at (805) 781-4576.

Sincerely,

A handwritten signature in black ink, appearing to read 'Martha Neder', written in a cursive style.

Martha Neder, Planner

cc. Harley Voss, Code Enforcement
Chuck Stevenson, Supervising Planner